

# Advice Summaries

December 2001

## Campaign

**Kirk Alan Pessner**  
**Law Office of Russell H. Miller**  
**Dated December 5, 2001**  
**Our File Number: A-01-249**

**Tony Miller, Treasurer**  
**March Fong Eu for Secretary of State**  
**Dated December 3, 2001**  
**Our File Number: A-01-263**

**Kelly Palmer**  
**City of Riverside**  
**Dated December 6, 2001**  
**Our File Number: I-01-272**

**John Brown**  
**Dated December 11, 2001**  
**Our File Number: A-01-276**

**Fiona Ma, Treasurer**  
**Re-Elect Treasurer Susan Leal**  
**Dated December 12, 2001**  
**Our File Number: A-01-281**

**Diane M. Fishburn**  
**California Senate**  
**Dated December 18, 2001**  
**Our File Number: A-01-282**

**Diane M. Fishburn**  
**California Assembly**  
**Dated December 18, 2001**

The exception to the definition of contribution provided by section 82015(f), which is applicable to certain meetings and fundraisers, does not apply to a phone bank.

A payment made to a committee in a fundraising program that will provide the payor with a painting whose fair market value equals the payment, is not a "contribution" under the Act and does not trigger notice obligations under § 84105 or § 85309(c).

The City of Riverside had an election in November of 2001 and is having a run-off election on January 15, 2002. The closing date for the second pre-election statement is December 29, 2001. This leaves only two days for the semi-annual statement for the period ending December 31, 2001. Under the authority granted in § 84205, the FPPC is allowing committees which are controlled by or primarily formed to support or oppose candidates in the January 15, 2002, run-off election, to combine the semi-annual statement for the second half of 2001 with the semi-annual statement for the first half of 2002.

The Act does not prohibit soliciting contributions to a ballot measure committee via e-mail and currently does not require sender identification on e-mail.

The Act does not prohibit the transfer of campaign funds between a local candidate's controlled committee for the same office.

Only candidates for elective state office who are listed on the March 2002 ballot will be subject to § 85309(a) (requiring disclosure of contributions of \$1,000 or more within 24 hours of receipt, if received during the election cycle). Candidates for elective state office not listed on the ballot will be subject to § 85309(c) (requiring disclosure of contributions of \$5,000 or more within 10 business days of receipt, if received outside the election cycle).

An Assembly member who will not be listed on the ballot for the March 2002 election is not subject to § 85309(a) (requiring disclosure of

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**Our File Number: A-01-283**

contributions of \$1,000 or more within 24 hours of receipt, if received during the election cycle). However, the Assembly member must comply with § 85309(c) (requiring disclosure of contributions of \$5,000 or more within 10 business days of receipt, if received outside the election cycle) until she terminates her status as a candidate for elective state office.

**Caren Daniels-Meade, Chief  
Office of the Secretary of State  
Dated December 18, 2001  
Our File Number: A-01-285**

This letter addresses the Secretary of State's filing officer duties with respect to section 85700 and regulation 18750, requiring that contributions of \$100 or more be returned within 60 days of receipt where the recipient does not possess all of the required information about the contributor. Also discussed are amendments to Form 501 relating to a state candidate's acceptance of the voluntary expenditure limits.

**Diane M. Fishburn  
California Senate  
Dated December 28, 2001  
Our File Number: A-01-305**

Where campaign funds are raised for an election and the candidate withdraws, the funds will become surplus funds at the end of the post-election reporting period after the election. Further, a Senate election committee may not be redesignated for election to the Senate in a different district. Rather, the candidate will be required to establish a new committee and account.

## Conflicts of Interest

**Robert J. Henry, General Counsel  
School and College Legal Services  
Dated December 24, 2001  
Our File Number: I-01-211**

Where a public official owns property within the boundaries of an area proposed for a new middle school, but not within 500 feet of any undeveloped sites of sufficient size to accommodate a middle school, he has no conflict of interest and may participate in discussions regarding possible locations for placement of a new middle school. Regulation 18704.2(a)(4) is not limited in its application to Redevelopment Agency decisions. If more than one area were under consideration for placement of a school, and there would be a material financial effect on the board member's property from placement of a school in an area where he or she owned property, he or she would not be able to vote to commission a study regarding the identification of sites for placement of a school in his or her area, to the exclusion of the others under consideration.

**Michael D. Martello  
City of Mountain View  
Dated December 11, 2001  
Our File Number: A-01-268**

This letter discusses the Act's conflict-of-interest rules and regulations in the context of an elected city official who receives trust income and has a future interest in commercial properties within the city's limits. The council is considering adoption of an ordinance that would impose a housing impact fee on all expansion of commercial office space.

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**Marilyn Farley**  
**City of Fairfield**  
**Dated December 6, 2001**  
**Our File Number: I-01-275**

The Act's conflict-of-interest provisions apply only to conflicts of interest arising from a public official's participation in governmental decisions affecting his or her economic interests. The fact that her husband is a county supervisor does not inherently create a conflict of interest for his wife if she becomes a city council member.

**Jean B. Savaree, City Attorney**  
**City of Belmont**  
**Dated December 28, 2001**  
**Our File Number: I-01-278**

Due to the government salary exception, a public official does not have a conflict of interest in a decision involving his or her employer (a school district), because the employer is a government agency.

**Roger A. Brown**  
**Peninsula Health Care District**  
**Dated December 27, 2001**  
**Our File Number: I-01-284**

Officials who have a conflict of interest with respect to decisions of the district that require three affirmative votes may not participate in decisions to change the district's policy to allow these types of decisions to be approved with a majority of those present, if this procedural question will affect the decision for which the officials have a conflict of interest.

## **Conflict-of-Interest Code**

**Richard D. Weiss**  
**County of Los Angeles**  
**Dated December 13, 2001**  
**Our File Number: A-01-122**

The Southern California Regional Airport District is a "local public agency," and the basis for its previous exemption from the requirement that it adopt a conflict of interest code is no longer viable. As such, it is required to adopt a conflict of interest code under the Act.

## **Gift Limits**

**Steven L. Dorsey**  
**City of Pasadena**  
**Dated December 19, 2001**  
**Our File Number: A-01-273**

Two tickets to the Rose Parade, Rose Bowl football game, and the guest luncheon fundraising events for the Tournament of Roses Association, a nonprofit organization under § 501(c) of the Internal Revenue Service Code, do not constitute gifts to a public official because they have "no value" under regulation 18946.4(b).

## **Revolving Door**

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**S. Guy Puccio, CRA, RMU  
W•P Wallace Puccio  
Dated December 3, 2001  
Our File Number: I-01-079**

**Phil Trounstone  
California Consumer Power &  
Conservation Financing Authority  
Dated December 19, 2001  
Our File Number: A-01-254**

## SEI

**Michael G. Barth  
Department of Motor Vehicles  
Dated December 27, 2001  
Our File Number: A-01-215**

**Salina Jessie-Edwards  
Orland City Council  
Dated December 6, 2001  
Our File Number: A-01-274**

A former state administrative official will have participated in a “judicial, quasi-judicial or other proceeding” if he rendered advice on a substantial basis in trials which involved specific parties.

This letter discusses the revolving door rules for a former member of the Governor's office who is considering representation of private sector firms in their pursuit of power purchase agreements with a state entity. The letter also considers issues regarding the Governor's direction and control over the state power entity.

Ownership of shares worth two thousand dollars (\$2,000) or more in the NASDAQ-100 Trust, Series 1, a unit investment trust, is an investment in a business entity under the Act.

Payments received as a result of an unsecured promissory note inherited from the official's spouse are income and if the loan was made to a business entity, that debt instrument represents an investment in the entity.